

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1016 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PACHHAT VARGE SAMUDAIK KHETI SAHAKARI MANDALI LTD

Versus

DY COLLECTOR, DHOLKA PRANT, DHOLKA & ORS.

Appearance:

MR BB NAIK for Petitioners

MR HL JANI for Respondent No. 1 & 2

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a society registered under the provisions of the Gujarat Cooperative Societies Act, filed this writ petition before this Court challenging therein the order of the respondent-Dy. Collector, Dholka Prant, Dholka, dated 17.10.83, annexure 'A' to this

petition, under which the land Survey No.110/3 and 199 admeasuring 19 Acres and 26 Gunthas, and 44 Acres and 36 Gunthas respectively, were granted in favour of respondent No.3 society.

3. The petitioner applied for grant of lands aforesaid. The petitioner and the respondent No.3 were the two claimants for the grant of aforesaid land. The respondent No.1 has preferred respondent No.3 and granted land in their favour. The learned counsel for the petitioner contended that the claim of the petitioner for grant of the land aforesaid was rejected by the respondent No.1 only on the ground that the date on which it applied for grant of the land and the date on which its claims for grant of land were considered, it was not a registered cooperative society under the provision of the Gujarat Cooperative Societies Act. The learned counsel for the respondent No.1 and 2 does not dispute the aforesaid contention. In para 8 of the reply to the Special Civil Application, the respondents No.1 & 2 have come up with the case that the petitioner society is not a registered society and hence they have no priority over the Gopalak Samuhik Sahakari Kheti Mandali Limited, the respondent No.3 and so it is not entitled to any Government waste lands. During the course of arguments, the learned counsel for the respondents No. 1 and 2 tried to make out a case that otherwise also the petitioner society was not eligible for grant of Government waste lands. However, the learned counsel for the respondents No.1 and 2 does not dispute that even a cooperative society which was not registered, pending consideration the matter of its registration, was eligible for grant of Government waste lands. The learned counsel for the petitioner has further urged that the respondent-society has already lands granted by the Government and further more land has been granted. I do not consider it to be appropriate to go on this question because the ground on the basis of which the claim of the petitioner for grant of Government waste land is made, is not sustainable and the matter has to be considered afresh by the respondent No.1 after taking into consideration the respective claims of the parties, i.e. the petitioner and the respondent No.3. It is also not in dispute that subsequent to the impugned order the petitioner society has been registered as a cooperative society under the provisions of the Gujarat Cooperative Societies Act. The ground on which the claim of the petitioner has been rejected for grant of Government waste land is unsustainable and as such the order impugned cannot be allowed to stand. The respondents No.1 and 2 cannot be allowed to support the order

impugned on the ground other than on which the claim of the petitioner for grant of Government waste land has been rejected. As stated earlier, the claim of the petitioner was rejected only on the ground that at the relevant time, it was not a registered cooperative society. The validity of the order impugned in this Special Civil Application has to be considered with reference to the ground given therein for rejection of the claim of the petitioner and not on the basis of the ground which are now sought to be supplemented by the learned counsel for the respondents.

4. In the result, this Special Civil Application succeeds and the same is allowed. The impugned order of the respondent No.1 dated 17th October 1983, annexure 'A', to this petition, is set aside. However, in case possession of the land in dispute has been given to the respondent No.3, it shall remain with respondent No.3 till the matter is decided afresh in accordance with law by the respondent No.1 regarding the claim of the petitioner for grant of waste lands of the aforesaid survey numbers. The respondent No.1 shall decide the matter within a period of three months from the date of receipt of certified copy of this order. While deciding this matter, the respondent No.1 shall give an opportunity to both, the respondent No.3 and the petitioner, to make out their claim for grant of Government waste land. It shall be open to the petitioner and respondent No.3 to give out their objection against each other. In case ultimately the respondent No.1 decides to grant the land in dispute in favour of the petitioner, then the respondent No.3 shall hand over possession of the lands in dispute to respondent No.1 without any notice and objection and the respondent No.1 shall give possession of the lands in question to the petitioner thereafter. The stay order granted by this Court shall stand automatically vacated on the day on which final order is passed by respondent No.1 in favour of the petitioner. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)